

is so great that the tribunal is satisfied, as matter of fact, that the election was not an election under the existing law. It is not enough to say that great mistakes were made in carrying out the election under those laws: it is necessary to be able to say, that, either wilfully or erroneously, the election was not carried out under those laws, but under some other method. For instance, if, during the time of the old laws, with the consent of a whole constituency, a candidate had been selected by tossing up a coin, or by the result of a horse-race, it might well have been said that the electors had exercised their free will, but it should have been held that they had exercised it under a law of their own invention, and not under the existing election laws, which prescribed an election by voting. So now, when the election is to be an election by ballot, if, either wilfully or erroneously, a whole constituency were to vote, but not by ballot at all, the election would be a free exercise of their will, but it would not be an election by ballot, and therefore not an election under the existing election law."

Applying the above principle, can it be said that the failure of the returning officer to reject the nomination papers of the respondent resulted in a situation where it appears that the election was not conducted in accordance with the principles of the election law? The word "election" to my mind comprises the many steps in the process whereby a candidate is returned from the issuing of a notification calling an election up to the declaration of the results. Nomination of a candidate is only one such step in this process. In this case, it is true that through the returning officer's improper acceptance of the respondent's nomination papers, the respondent was allowed to go to the poll and was elected. But there was a free contest between the respondent and the petitioner with the result that the former polled a majority of votes. No allegation of corrupt motives on the part of any election official or improper practices is made in this case. The petitioner's only complaint is the non-compliance of the returning officer with one of the provisions of the election law, viz., regulation 4(3). It is not suggested that the method of voting was not by ballot or that the majority of the voters had been prevented by corruption, coercion or undue influence or through lack of the necessary facilities from voting freely according to their preference. Nor is any complaint made of a fraudulent counting of votes or a violation of the secrecy of the ballot.

It is true that in the *Haverfordwest case*,⁽⁶⁾ an election was held to be void as the returning officer had improperly refused to notice the nomination of one of the only two candidates for an election of a member for a borough to Parliament. There Brett J. said:—

"The determining whether one or two candidates are put for election is a matter which goes so entirely to the substance of the election that what the returning officer did in refusing to take notice of Mr. Davies' nomination vitiates the election."

That is a case of an improper rejection of a nomination, not as it is here the improper

A acceptance of a nomination. There is an important distinction between the two. In the former the whole constituency was deprived of its right to vote for a candidate who was legally entitled to go to the poll. In the latter the two candidates were put up for election and every-one of the electorate had a chance to vote for the candidate of his choice.

B These considerations lead me to the conclusion that despite the transgression of the law by the returning officer the election in this case had substantially been conducted in accordance with the principles of the law. I also hold that the non-compliance of the law by the returning officer had not affected the result of such election, that is, the success of one candidate over the other.

C I therefore determine that the respondent was duly elected and I shall so report to the Election Commission. I shall also report to the Election Commission that no corrupt or illegal practice has been proved to have been committed. (See sections 36 and 37 of the Election Offences Ordinance, 1954).

The petition is dismissed with costs.

E *Petition dismissed.*
Solicitors: *Isahak Hamid & Co.; Wan Mustapha & Co.*

F **KOO WAH & ANOR. v. WONG YING CHOON & ANOR.**

LEE SENG & ANOR. v. SAME

[O.C.J. (MacIntyre J.) January 26, 1965]

[Ipoh — Civil Suits No. 18 and 19 of 1963]

G *Damages — Negligent driving — Quantum of damages — Damages for loss of expectation of life — Conventional figure — Damages for loss of support — Dependency of parents — Civil Law Ordinance, 1956.*

H In these cases the claims were for damages arising out of an accident in which two female tappers aged 18 and 21 respectively lost their lives in consequence of being knocked down by a motor vehicle belonging to the first defendant and driven by the second defendant. The actions were brought by their legal representatives for the benefit of their respective estates under the Civil Law Ordinance, 1956 and on behalf of the parents of the deceased. The claims were for (a) loss of support; (b) loss of expectation of life; and (c) funeral expenses. The defendants admitted liability and the only issue at the trial was the quantum of special and general damages.

I Held: (1) the sums of \$2,713.20 and \$1,558.80 should be awarded for loss of support in these two cases respectively. Since the claim under section 8 merges with the claim under section 7 the sum of \$3,000 should be awarded as general damages in each case;

(2) the conventional figure of \$3,000 for damages for loss of expectation of life in the case of a young adult should be followed unless there is evidence of a substantial fall in the value of currency.

Cases referred to:—

- (1) *Lee Sai Cheong v. Wan Lim Cheong* [1962] M.L.J. 259.
- (2) *So Ki Kim v. Wee Siew Lai* [1962] M.L.J. cxxii.
- (3) *Wong Kuee v. Pahang Lin Siong Motor Co. Ltd. & Anor.* [1962] M.L.J. lxxxiii.
- (4) *Yeoh Kean Chooi v. Monaghan* [1964] M.L.J. lx.
- (5) *Seenivasan and another v. Lim Yew Seng* [1961] M.L.J. 23.
- (6) *Seow Seng Choon v. Yam Kim Chye* [1952] M.L.J. 244.
- (7) *Lok Yin v. Pat Thoo* [1948] M.L.J. 26.

CIVIL SUITS.

C. Navaretnam for the plaintiffs.

H. R. Sankey for the defendants.

Cur. Adv. Vult.

MacIntyre J.: This judgment is in respect of two civil suits which were consolidated for the purpose of trial. The claims in both suits are for damages arising out of one and the same accident which occurred on the early morning of the 8th July, 1961 on the Ipoh/Kuala Kangsar Road, in which two young Chinese female tappers while proceeding on bicycles to their place of employment, lost their lives in consequence of being knocked down by a motor vehicle belonging to the first defendant and driven by the second defendant.

The actions are brought by the legal representatives of the estate of Foo Foh Kiew (f) deceased in Civil Suit No. 18 of 1963 and of the estate of Lee Yeng alias Lee Ah Mooi (f) deceased in Civil Suit No. 19 of 1963 for the benefit of the respective estates under the Civil Law Ordinance 1956, and on behalf of the parents of the deceased.

The claim for damages in both suits fall under three heads, namely:—

- (a) Loss of support;
- (b) Loss of expectation of life; and
- (c) Funeral expenses.

The defendants admit liability and the only issue for trial is the quantum of special and general damages.

Counsel for the plaintiffs and for the defendants are the same in both civil suits and accept the figures given in evidence by the manager of Changkat Salak Estate, as to the earnings of the two deceased girls who had worked in his estate as daily paid workers. The monthly earnings of Foo Foh Kiew was said to have averaged \$103.20 and of Lee Yeng, \$90.26.

Koo Wah, one of the plaintiffs in Civil Suit No. 18 of 1963 and the father of Foo Foh Kiew,

A deceased, said in the course of his evidence, that he was partly dependent on the earnings of his deceased daughter to meet the household expenses. He further testified that at about the time of her death, his household consisted of six persons besides himself. They were his wife, an aged mother and four children including the deceased. His two younger children were still attending school and he himself had been out of employment for the last 5 years as a result of failing eye-sight due to disease. Contributions to the family budget came from his eldest son aged 25 who paid \$90 a month, from his wife who earned \$50 to \$60 a month as an odd job labourer, and from his deceased daughter who also gave \$90 a month. However, the deceased had drawn upon her contribution to the extent of \$20 to \$25 per month to meet personal expenses in respect of clothing and entertainment. He estimated that cost of food consumed by her to be about \$35 per mensem.

The claim in this case for funeral expenses was \$500. Witness produced a receipt (P.1) for \$250 as evidence of the price he paid for a coffin and deposed that he had paid \$200 to three Buddhist priests to perform the funeral rites and incurred an expenditure of \$50 to transport the coffin to the burial ground.

When questioned about matrimonial prospects, if his daughter had not died, witness said that since she was 18 years of age, marriage was not contemplated. However, he would not have objected if she wanted to get married. The usual age of marriage for a girl in her station in life was 25 or 26.

In respect of the claim in Civil Suit No. 19 of 1963, evidence was given by Lee Seng, one of the plaintiffs and father of Lee Yeng alias Lee Ah Mooi (f) deceased. He deposed that at the time of the accident his family consisted of himself, his wife, and eight children. Of these, he claimed, the only earning members were himself and his deceased daughter. His daughter contributed \$70 to \$80 per mensem towards the family budget. His own earnings as a tailor averaged \$130 per mensem but since his daughter's death he had been out of employment. He could not find the time to work for a living as he had to attend on his wife who had not recovered from the shock of her daughter's death. He and his family were now living mainly on the charity of relatives. He was unable to say whether the deceased drew upon her contribution to meet personal expenses or not; nor to estimate the cost per mensem of the food supplied to her.

Regarding funeral expenses this witness claimed to have spent \$450 but was unable to produce receipts or vouchers because he had lost

them. The coffin had cost him \$160 according to information given by a relative. The lowest price of a coffin in the market then was \$120. He further said that a part of the funeral expenses were paid by his relatives but the amount paid by himself came to \$340, which he had realised by selling the family jewellery,

Witness also admitted that the usual age of marriage for a girl of his daughter's station in life was 25 or 26 and that he would not have objected to her marriage even though it might have resulted in loss of support. However, at the time of her death, deceased was about 21 years old and marriage was not contemplated.

No witnesses were called to corroborate the evidence of Koo Wah or Lee Seng as to the fact of or the value of their dependence on the earnings of their deceased daughters; nor was any serious attempt made to prove the items of expenditure in respect of funeral expenses in Civil Suit No. 19 of 1963.

I shall deal first with the claim under item (b) in respect of the loss of expectation of life. Counsel for the defendants suggested that I should take the conventional figure of \$3,000 as the sum to be awarded under this head, and referred me to a passage in the judgment of the Court of Appeal in *Lee Sai Cheong v. Wan Lim Cheong* ⁽¹⁾ wherein on the question of assessment of compensation for loss of expectation of life Thomson C.J., as he then was, made the following observations:

"I would say that in this country at the present time this court should express the view that the conventional figure in the case of a young adult should be \$3,000 and that view should be accepted by judges."

Counsel also referred to the judgment in *So Ki Kim v. Wee Siew Lai* ⁽²⁾ where a similar award was made, and compared the figure with the award of \$2,500 made in *Wong Kuee v. Pahang Lin Seong Motor Co. Ltd. and Another* ⁽³⁾ in the case of a deceased aged 20 and with an award of \$3,500 in *Yeoh Kean Chooi v. Monaghan* ⁽⁴⁾ in the case of a deceased bachelor aged 29, and submitted that the figure suggested by him was fair and reasonable.

On the other hand, counsel for the plaintiffs referred to a judgment of the Court of Appeal delivered by Thomson C.J., as he then was, in *Seenivasan And Another v. Lim Yew Seng* ⁽⁵⁾ in which he expressed the view that an award of \$3,500 for loss of expectation of life had become almost a conventional figure. On the basis of this judgment, counsel suggested that I should award \$3,500. He did not think that even \$3,500 was on the high side in view of the award of \$4,000 made in *Seow Seng Choon v. Yam Kim Chye*. ⁽⁶⁾

I have considered the authorities cited and

A find that with the exception of *So Ki Kim v. Wee Siew Lai*, *supra*, the judgment in *Lee Sai Cheong v. Wan Lim Cheong*, *supra* is the most recent of them all. However, as mentioned hereinbefore, the award in *So Ki Kim v. Wee Siew Lai*, *supra*, did not exceed \$3,000.

B The judgment in *Lee Sai Cheong v. Wan Lim Cheong*, *supra*, besides declaring that \$3,000 should be regarded as the conventional figure also contains a directive to the judges to accept that view. It is another example of judicial legislation, and I am of the opinion that I have no discretion to award any sum in excess of \$3,000 unless there is evidence of a substantial fall in the value of currency since the date of that judgment.

C Taking into consideration the ages and the physical condition of the deceased girls in the present actions, I award in each case a sum of \$3,000 for loss of expectation of life.

D I shall now consider the claim under item (a) for loss of support. Counsel for the defendants suggested that a fair estimate of the loss of support suffered by the parents in Civil Suit No. 18 of 1963 and Civil Suit No. 19 of 1963 would be \$30 and \$25 per mensem, respectively. E He estimated the number of years of purchase as being the period intervening between the date of the death of the deceased girls and the approximate year of their respective marriages. Taking the age of 25 as the probable age of marriage in normal circumstances, he urged that I should accept the figure of 7 and 5 as the multiple in each of the cases in the order mentioned above and award \$2,520 and \$1,500 respectively. F He arrived at these figures by multiplying the annual loss by the number of years of purchase.

G Counsel for the plaintiffs on the other hand, submitted that no deductions should be made for board and other necessities from the monthly contributions because parents were under moral and legal obligation to maintain their children. In support of this argument he cited the case of *So Ki Kim v. Wee Siew Lai*, *supra*. I have had the advantage, besides reading the digest of that case in the *Malayan Law Journal*, of reading a copy of the full judgment by Ismail Khan J. There is no indication whatever, except by implication, that the point raised by counsel was considered and disposed of. H In *Lok Yin v. Pat Thoo* ⁽⁷⁾ where the deceased was an adult aged 20 and whose monthly earnings averaged \$36, Cussen J., in assessing the value or the extent of loss of support took into account the amount expended by the deceased for food, clothing and sundry expenses.

I In the absence of any clear authority to the contrary, I am not prepared to accept the

proposition advanced by counsel; nor do I feel obliged to take into consideration moral obligations to resolve a legal issue. There is, no doubt, a legal obligation on the part of the father of a child to maintain it but that obligation subsists only up to the time the child is able to maintain itself. That is the clear implication of the provisions of section 3(1) of the Married Women and Children (Maintenance) Ordinance 36 of 1950 which reads:

"If any person neglects or refuses to maintain his wife or a legitimate child of his *which is unable to maintain itself*, a court, upon due proof thereof, may order such person to make a monthly allowance for maintenance"

Again, if at any time after an order is made for the maintenance of a child it becomes capable of maintaining itself, then the father would become eligible under section 6(1) to apply for a rescission of the order.

The principle embodied in the above-mentioned sections is also recognised by the provisions of the Income Tax Ordinance No. 48 of 1947. Under the Ordinance, even in the case of a child below the age of 16, a tax payer is not entitled by virtue of proviso (v) of section 35(2)(d) to deductions in respect of maintenance of his child if it carried on or exercised during the year preceding the year of assessment a trade, business, profession, vocation or employment other than under articles or indentures.

I therefore hold that no legal principle is infringed if in assessing the value of the dependency in the present cases, the amount expended for food and other necessities are deducted from the contributions made.

However, counsel also submitted, that in the event I held against him on this point, he would suggest \$35 per mensem with 8 years purchase and \$30 per mensem with 5 years purchase as a fair estimate of the loss of support in respect of claims in Civil Suit No. 18 of 1963 and Civil Suit No. 19 of 1963 respectively. On that basis, he estimated the total pecuniary loss to the parents at \$3,360 and \$1,800 respectively.

I hold that \$35 per mensem or \$420 per annum with 8 years purchase and \$30 per mensem or \$360 per annum with 5 years purchase would be a fair estimate of the pecuniary loss suffered by the parents in Civil Suit No. 18 of 1963 and Civil Suit No. 19 of 1963, respectively; but I disagree with the method of calculation adopted by both counsels in assessing the total loss in each case. The sum to be awarded for loss of support is the sum which if invested at 5 per cent per annum would provide the parents in Civil Suit No. 18 of 1963

A with \$35 per mensem over a period of 8 years and the parents in Civil Suit No. 19 of 1963 with \$30 per mensem over a period of 5 years.

I therefore assess the amount under this head in Civil Suit No. 18 of 1963 at \$2,713.20 and in Civil Suit No. 19 of 1963 at \$1,558.80. B Since the claim under section 8 of the Civil Law Ordinance merges with the claim under section 7, I will award \$3,000 as general damages in each case.

Before I go on to consider item (c) in respect of special damages, I must refer to the sum of \$559 paid to the estate of the deceased in Civil Suit No. 19 of 1963 from the Employees Provident Fund. Counsel for the defendants submitted that the accelerated benefit accruing to the estate by the payment of this sum now should be taken into account in assessing compensation for loss of support. But he also expressed the view that since the award for pecuniary loss in this case would be less than the award for loss of expectation of life, any deduction made in respect of accelerated benefit would not affect the final award. For the same reason, it is unnecessary for me to give a decision on this point. C D E

On the question of funeral expenses, I accept the evidence of Koo Wah in respect of the claim in Civil Suit No. 18 of 1963. I will award \$500 as special damages in respect of funeral expenses.

F I was not impressed with the evidence of Lee Seng in respect of the claim in Civil Suit No. 19 of 1963. He produced no receipts, vouchers, or witnesses. Even his evidence on the value of the coffin was hearsay. He struck me throughout the hearing as a man bent on exaggerating his claim. G He claims to have sold his jewellery for \$340 to pay a part of the funeral expenses of \$450. The balance, according to him, was paid by relatives but denies any obligation to refund the sum. I am unable to accept his evidence in toto and assess special damages in respect of funeral expenses at \$300. H

There will therefore be judgment for the plaintiffs in Civil Suit No. 18 of 1963 for \$3,500 and costs, and for the plaintiffs in Civil Suit No. 19 of 1963 for \$3,300 and costs.

Orders accordingly.

I Solicitors: Gibb & Co.; Singh & Co.